

**APR 22 2003**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**CATHY A. CATTERSON**  
**U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ADEKUNBO BENSON, aka Sean Banji  
Howard,

Defendant - Appellant.

No. 02-50287

D.C. No. CR-96-01881-1-RMB

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Rudi M. Brewster, District Judge, Presiding

Submitted April 11, 2003\*\*  
Pasadena, California

Before: SCHROEDER, Chief Judge, GRABER, Circuit Judge, and  
SINGLETON,\*\*\* District Judge.

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\*/ This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

\*\*\* Honorable James K. Singleton, United States District Judge for the District of Alaska, sitting by designation.

Defendant Adekunbo Benson (aka Sean Banji Howard) appeals from the 49-month sentence imposed by the district court upon revocation of Defendant's supervised release in June 2002. We affirm.

1. Citing Rule 32(h) of the Federal Rules of Criminal Procedure and Burns v. United States, 501 U.S. 129, 138-39 (1991), Defendant argues that the district court erred by failing to provide him with notice of the court's intention to "depart upward" from the Sentencing Guidelines before sentencing Defendant for violating the terms of his supervised release. Defendant's argument must fail. The U.S. Sentencing Commission has never issued binding Guidelines relating to sentencing for violations of supervised release. Chapter 7, which relates to violations of supervised release, contains "neither guidelines nor interpretations or explanations of guidelines" but merely "policy statements [that] are not binding on the sentencing judge." United States v. George, 184 F.3d 1119, 1121 (9th Cir. 1999). Because there were no binding Guidelines from which the district court could "depart," Defendant was not entitled to notice. United States v. Garcia, No. 02-50069, 2003 WL 1480344, \*2 (9th Cir. Mar. 25, 2003).

A district court abuses its discretion if it fails to consider the policy statements contained in Chapter 7. United States v. Tadeo, 222 F.3d 623, 625 (9th 2000). The district court did not abuse its discretion in this case, because it

expressly considered the probation report and the advice of Chapter 7 before imposing sentence, and it explained in detail why it was sentencing Defendant to more than the recommended sentence. Garcia, 2003 WL 1480344, at \*3.

2. The district court did not err by failing to provide Defendant with his right of allocution at sentencing. Before sentencing, the district court clearly afforded Defendant an opportunity to address the court, which Defendant declined. There was no error.

AFFIRMED.